No. 835

CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

JOHN MANGIARACINO,
Petitioner,

vs.

LACLEDE STEEL COMPANY,
a Corporation.

PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of the State of Missouri,

and

SUPPORTING BRIEF.

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PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of the State of Missouri.

To the Hon. Chief Justice and Associate Justices of the Supreme Court of the United States:

Comes now John Mangiaracino, petitioner, and respectfully petitions this Honorable Court to grant a writ of certiorari to the Supreme Court of the State of Missouri, and to remove therefrom to this Court for review the record in the case lately pending in said Supreme Court of the State of Missouri styled John Mangiaracino, Respondent, v. La-

clede Steel Company, a Corp., Appellant, being Cause No. 37,172 on the docket of the said Supreme Court of the State of Missouri, the duly certified record including all the proceedings of the Circuit Court of the City of St. Louis, Missouri, where said cause was tried, and in the St. Louis Court of Appeals, to which an appeal was taken by the said Laclede Steel Company from the judgment of the trial court, and in the Supreme Court of the State of Missouri, to which court said cause was transferred, is filed herewith.

Your petitioner represents that he has been aggrieved by the judgment of the Supreme Court of the State of Missouri entered in said cause, wherein the said Supreme Court of the State of Missouri reversed the judgment of the trial court, and on the 11th day of December, 1940, thereafter, denied this petitioner's motion for rehearing in said cause and rendered its final judgment reversing the judgment of the trial court.

Your petitioner states that the matters at issue in said cause are of a federal nature, and are of peculiar gravity and importance in that your petitioner has claimed rights and privileges under the Constitution of the United States, Article IV, Section 1, and the decision of the Supreme Court of the State of Missouri complained of is in direct conflict with the applicable decisions of this Honorable Court upon the questions involved, and upon the principles announced by this Court in those decisions.

STATEMENT OF PROCEEDINGS.

This was a suit to recover damages for a personal injury, and was instituted in the Circuit Court of the City of St. Louis, Missouri, by your petitioner, John Mangiaracino, to recover for personal injuries sustained by him on May 1, 1936, as a result of specified allegations of negligence of the Laclede Steel Company.

In the trial court the case was tried on the plaintiff's amended petition, which alleged that this petitioner, on or about May 1, 1936, was in the employ of the Laclede Steel Company, in its mill in Granite City, Illinois, and that on that date plaintiff was in and upon the premises at and near a hotbed known and numbered as hotbed No. 2; that while plaintiff was exercising ordinary care for his own safety, and while immediately adjacent to the machinery of this hotbed, the machinery, motor and rollers did suddenly, unexpectedly and without warning start in motion and move, and plaintiff's left foot was caught therein, and he was caused to sustain injuries as specified in the petition. The petitioner charged the Laclede Steel Company with negligence in causing, suffering and permitting the electric current and the machinery on the hotbed to be and remain on, and negligently causing, suffering and permitting the main switch of said machinery to be connected or engaged, all in violation of the duly promulgated rule and custom of the defendant's mill.

The answer of the respondent, Laclede Steel Company, pleaded that the plaintiff and defendant were operating under the provisions of the Workmen's Compensation Act of Illinois at the time of the plaintiff's injury, and that his only remedy was provided by that act, and that the common-law remedy had been abolished.

In reply to this answer plaintiff pleaded in detail that he had filed a claim with the Industrial Commission of Illinois; that the matter was heard by an Arbitrator appointed by that Commission who found in favor of the employee and against the employer; that then the employer appealed to the full Commission which after reviewing the record affirmed the award in favor of the employee; that the employer then caused a writ of certiorari to be issued out of the Circuit Court of Madison County, Illinois, to the In-

dustrial Commission and John Mangiaracino, to review the proceedings held before the Industrial Commission; that this matter was then submitted to the Circuit Court of Madison County, Illinois, the situs of the accident, and the domicile of the plaintiff; that the Circuit Court of Madison County held that under the facts and laws applied to those facts the injury did not arise out of and in the course of the employment within the meaning of those words as they are used in the Illinois Compensation Act, and the injury was not therefore compensable under that act. The plaintiff also pleaded the statutory and case law of Illinois with respect to the jurisdiction and power of the Circuit Court of Madison County in this proceeding, and also set forth the decisions of the Supreme Court of Illinois to show that this accident did not arise out of and in the course of the employment within the meaning of those terms as used in the Illinois Compensation Act. Plaintiff further pleaded that the decision of the Circuit Court of Madison County, Illinois, was a final adjudication on the merits by a court of record having jurisdiction over both the subject matter and the parties to the accident, and that such ruling must therefore be given full faith and credit by the courts of Missouri under Section 1, Article IV of the Constitution of the United States and laws of the United States, and also under the Constitution and laws of the State of Missouri.

The defendant then moved to strike out all of the allegations in the reply which related to the proceedings instituted under the provisions of the Illinois Compensation Act. This motion was overruled by the trial court.

The trial was had before the Court and a jury, and it resulted in a verdict and judgment in favor of this petitioner in the sum of four thousand five hundred ($4,500.00) dollars. An appeal was duly perfected to the St. Louis

Court of Appeals in which Court your petitioner filed a motion to remove the appeal to the Supreme Court of the State of Missouri on the ground that a constitutional question was involved; that is, that the interpretation of Article IV, Section 1 of the Constitution of the United States was involved in the decision on the merits of this case. The St. Louis Court of Appeals then transferred this case to the Supreme Court of the State of Missouri, where the judgment was on October 31, 1940, reversed.

Your petitioner, in due time, filed in said Supreme Court of Missouri his motion for a rehearing which was received by said Court and on the 11th day of December, 1940, the said Supreme Court of the State of Missouri denied said motion for a rehearing. Said Supreme Court of Missouri having denied petitioner's motion for a rehearing on said date, the judgment of said Court became final. (See Mangiaracino v. Laclede Steel Company [Mo. Sup. Ct.], 145 S. W. [2] 388, Secs. 1063 and 1065, R. S. Mo. 1929.)

Donnell v. Wright, 199 Mo. 304, 97 S. W. 928;
Ginnochio v. Ill. Cent. Ry. Co., 264 Mo. 516, 175 S. W. 196;
Abbott v. Kansas City Elevated Ry. Co., 232 Mo. 616, 135 S. W. 1199;
Berry v. Majestic Milling Co., 304 Mo. 292, 263 S. W. 406;
Strottman v. St. Louis I. M. & S. Ry. Co., 228 Mo. 154, 128 S. W. 187, 30 L. R. A. (N. S.) 377;
Walsh Const. Co. v. United States Guaranty Company (C. C. A. 8), 76 Fed. (2) 240;
Sabol v. St. Louis Cooperage Co. (Mo. Sup.), 31 S. W. (2) 1041.

SUMMARY AND SHORT STATEMENT.

This accident occurred on May 1, 1936. The plaintiff (your petitioner) had been employed by the Laclede Steel Company for about fourteen months prior to the date of

the accident, and for about three or four months immediately preceding May 1, 1936, he was what was known as a billet boy. The Laclede Steel Company remelted large steel rails and cast out of them billets, which were described as round bars of varied diameters, and about seventy to eighty feet in length. The billet boys receive this extremely hot billet in the mill after it is cast, bend it, and then feed it into rollers, which take the steel billets to the finishers, whence it is passed down another series of rollers to the hotbed, and from there it goes to the shearers, who cut the billets to fit the particular orders then on hand. Due to the intense heat of the billet when handled by the billet boys, and also due to the fact that it is necessary to expend a great amount of energy to perform this work satisfactorily, the billet boys, including your petitioner, worked on the job for a half hour, then had the succeeding half hour off, and had this opportunity to get away from this excessive heat. On May 1, 1936, the date of this accident, your petitioner worked from the half hour to the hour on his shift, and the accident occurred between 9 and 9:30 p. m. during his half hour off. During the time of this half hour off the employees could go anywhere in the plant where they so desired. The petitioner went down to hotbed No. 1, which a friend of his, Pete Ferro, had just started working that day. He went there to show Pete how to pull the bed and do the work better with less strain on himself, and also how to avoid some of the heat from this steel. He remained there about five minutes and then went over to hotbed No. 2, where he met Cliff Shambro, also a friend of his. On that date hotbed 2 had been shut down at 3 p. m. and was not being used at all during the petitioner's shift. There was no hot steel on it, and the rolls, gears and mechanism were and had been, for at least six hours, motionless. Ferro was with him at that time;

there were several other employees around hotbed No. 2 resting and cooling off during their rest periods. Shambro at the time was sitting on the seat next to the mechanism which controlled the rollers and the flappers in the hotbed, and plaintiff sat on the turtle or metal covering housing the gears and mechanism, and then straddled an eye on top of this turtle. Petitioner placed his feet on the bar below the turtle, and he was there about five minutes and had his foot on the bar. He started to get up when the machinery started in motion, and his left foot went into the bar, injuring him. He hollered, and Shambro then came over and picked him up and took him out. Petitioner further stated that he had formerly worked on the hotbed, among his other employment for the Laclede Steel Company, and that he was familiar with the rules and regulations regarding their operation. One of these rules was that the last man on the shift was to disconnect the current from the hotbed at the main switch, if this particular hotbed was not to be used in the next succeeding shift. If this main switch were disconnected it would be impossible for any of the gears or mechanism on this hotbed to operate, regardless of what anybody did to them.

Sam Shambro testified that he had worked for the Laclede Steel Company starting the day after the plaintiff did; that he worked on the hotbeds, and also worked as a billet boy, but he was not present on the date that John Mangiaracino was injured; that he was familiar with the custom and practice with respect to the operation of the hotbed; that it was a rule of the company that when the hotbed was not being operated the current should be turned off. They had direct orders to turn off this power when the hotbed was not in operation; that prior to the date of the accident while working as a billet boy there were also present both billet boys and men on the hotbed. They would sit around or lay around on the hotbeds that were

not in operation, during their rest periods (Record 67, 68 and 69). There were no rules requiring the men to be in any particular portion of the plant during their time off (Record 71 and 72). He was never forbidden to sit on a hotbed that was not in operation (Record 72).

The plaintiff then introduced into evidence Exhibit G, which was a certified copy of the judgment of the Circuit Court of Madison County, Illinois, in the compensation proceeding. This was certified in accordance with the Act of Congress relating to judgments (Record 72, 73, 74 and 75).

The parties then stipulated that the statutes, opinions and citations referred to in the defendant's answer, and the plaintiff's reply thereto, were offered in evidence (Record 83). The defendant also admitted the allegations contained in the reply with respect to the proceedings before the Industrial Commission of the State of Illinois, and also the Circuit Court of Madison County, Illinois, and that these proceedings were accurate. It was also stipulated that the parties were operating under the provisions of the Illinois Compensation Act on the date of the accident (Record 83 and 84).

In its opinion the Supreme Court of Missouri assigned as its reasons for reversing the judgment that the evidence adduced in the case showed that your petitioner had a cause of action under the Illinois Workmen's Compensation Act, and that his common-law right of action was extinguished by the enactment of the Illinois Workmen's Compensation Act, but the Supreme Court of the State of Missouri refused to hold that the judgment of the Circuit Court of Madison County, Illinois, in the compensation proceedings introduced by your petitioner was binding and conclusive upon all parties concerned.

SPECIFICATIONS OF ERROR.

The judgment secured by the petitioner in the trial court was reversed by the Supreme Court of Missouri under an erroneous interpretation of Article IV, Section 1, of the Constitution of the United States, as applied to the facts in this case in the following particulars:

1. Error in failing and refusing to hold that the applicability of the Illinois Compensation Act was not open to question by the trial court, since there was a final judicial determination of this question by a court of competent jurisdiction.

2. Error in holding that petitioner failed to make a case showing respondent's liability under common-law negligence.

3. Error in holding that the trial court erred in not directing a verdict in favor of the respondent.

OPINION OF THE COURT BELOW.

There was no opinion of the trial court in the case here sought to be reviewed.

The opinion of the Supreme Court of the State of Missouri appears in the printed record herewith filed. It is reported in 145 S. W. (2), page 388 (Adv. Sheet No. 2, Jan. 14, 1941). This case is not yet reported in the official Missouri reports.

JURISDICTION OF THIS COURT.

Jurisdiction of this Court is based upon the Judicial Code, Section 237, as amended by the Act of February 13, 1925, 43 Stat. 937, U. S. Code, Title 28, Sec. 344, Par. (B), permitting petitions for certiorari to be prayed for and issued to the highest courts of the various states where

any title, right, privilege or immunity is especially set up or claimed by either party under the Constitution of the United States.

The decision here sought to be reviewed, having construed the rights and privileges of the petitioner under Article IV, Section 1, of the Constitution of the United States, and the decisions of this Court thereunder, the jurisdiction of this Court attaches because the Supreme Court of Missouri, in reversing the judgment of the trial court, has decided a federal question of substance in a way not in accord with the applicable and controlling decisions of this Court. Some authorities sustaining the jurisdiction are:

Fauntleroy v. Lum, 210 U. S. 230;
American Express Co. v. Mullins, 212 U. S. 311.

II.

The Supreme Court of Missouri is the highest court of that state.

The original date of the judgment of the Supreme Court of Missouri here sought to be reviewed is October 31, 1940.

A petition and motion for rehearing was filed on November 8, 1940, within the time provided by the rules of the Supreme Court of Missouri, and said motion for rehearing was overruled on the 11th day of December, 1940.

The judgment of the Supreme Court of Missouri reversing outright the judgment of the Circuit Court of the City of St. Louis is a final judgment in Missouri.

Sections 1063 and 1065, R. S. Mo. 1929;
Donnell v. Wright, 199 Mo. 304, 97 S. W. 928;
Ginnochio v. Illinois Central R. R. Co., 264 Mo. 561, 75 S. W. 196;
Abbott v. Kansas City Elevated Railway Co., 232 Mo. 616, 135 S. W. 799;

Berry v. Majestic Milling Co., 304 Mo. 292, 263 S. W. 406;
Strottman v. St. Louis, Iron Mountain & Southern Ry. Co., 228 Mo. 154, 128 S. W. 187, 30 L. R. A. (N. S.) 377;
Walsh Const. Co. v. United States Guaranty Co. (C. C. A. 8), 76 Fed. (2) 240;
Sabol v. St. Louis Cooperage Co., Missouri Sup., 31 S. W. (2) 1041.

III.

Only one question is raised in this court on this record. That question is whether a Missouri court may declare a person under the provisions of the Illinois Workmen's Compensation Act after an Illinois court of competent jurisdiction, both as to the person and the subject matter, has rendered its final decision that the Illinois Workmen's Compensation Act does not, under the circumstances, apply to the same parties on the same set of facts.

SUMMARY OF REASONS FOR THE ALLOWANCE OF THE WRIT.

I.

In this case the Supreme Court of the State of Missouri has determined a federal question of substance in a way not in accord with the decisions of this Court, and in a way not in accord with the applicable and controlling principles of those decisions rendered by this Court.

II.

The Supreme Court of Missouri has erroneously ruled that the courts of Missouri may inquire into the correctness of a decision of an Illinois court of competent juris-

diction, both as to the person and the subject matter, after the Illinois Court has rendered a final decision between the same parties, and on the same set of facts; the Supreme Court of Missouri has erroneously ruled that the courts of Missouri are authorized to declare a workman to be operating under and subject to the provisions of the Illinois Workmen's Compensation Act, after an Illinois court of competent jurisdiction has rendered a final judgment that, under the facts and circumstances, the Illinois Compensation Act did not apply to the parties and the remedies and procedure provided by that act were not applicable nor available to them.

III.

The opinions and decisions of this Court, as well as those of other state courts and other federal courts, hold a judgment is conclusive as to all of the media concludendi, and that that judgment cannot be impeached either in or out of the state by showing that it was based upon a mistake of law, or a mistake of fact.

PRAYER.

For the purpose of correcting the errors complained of, and to the end that the rights of your petitioner may be determined in accordance with the federal law, your petitioner respectfully prays that a writ of certiorari be issued under the seal of this Court and directed to the Supreme Court of the State of Missouri, commanding it to certify and send to this Court on a day certain to be therein designated a full and complete transcript of the record and proceedings of the said Supreme Court of Missouri, in the within described cause of John Mangiaracino, Respondent, v. Laclede Steel Company, a Corp., Appellant, No. 37,172, to the end that the judgment of the said Supreme Court

of Missouri in said cause may be reviewed by this Court as provided by law, and that your petitioner may have such other relief as to this Court may seem appropriate, and that the judgment of the said Supreme Court of Missouri may be reversed by this Honorable Court.

Respectfully submitted,

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